



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

April 18, 1991

Mr. Darcy Alan Frownfelter
Attorney
Frownfelter & Leal
615 East Schuster Ave., Bldg. 10
El Paso, Texas 79902

OR91-197

Dear Mr. Frownfelter:

You ask whether certain information relating to proposals to conduct archeological investigations for a project of the El Paso County Lower Valley Water District Authority (hereinafter, the "authority") is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11,772.

The requestor is one of the three firms which submitted proposals. The requested information includes copies of the "scoring matrices" and the "criteria" used by the authority and three other public entities to evaluate the requestor's proposal and the proposal which received the highest score. The requestor also seeks "the names and experience of key personnel" of the firm submitting the proposal receiving the highest score, which information is contained in that proposal. Finally, the requestor seeks transcripts of the minutes of two specified board meetings of the authority and of any other board meetings where the proposals were discussed.

You claim that the "scoring matrices" and "criteria" are excepted from required public disclosure by section 3(a)(4) and section 3(a)(11) of the Open Records Act. Section 3(a)(11) protects "inter-agency or intra-agency memorandums or letters." We believe that the "scoring matrices," which reflect the opinions of the reviewers as to the ranking of the proposals, fall within the section 3(a)(11) exception. The purpose of that exception is to protect advice, opinion, and recommendations used in agency decision-making so as to encourage open and frank discussion in the deliberative process. *Open Records Decision No. 538* (1990). The "criteria" used on the scoring matrices cannot, however, be characterized as "advice, opinion, or recommendation" and therefore do not fall

within the section 3(a)(11) exception to required disclosure.

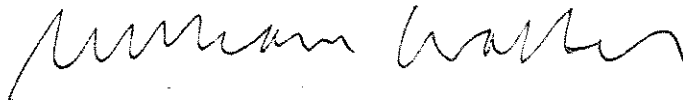
However, we believe that you have shown that the "criteria" fall within the section 3(a)(4) exception, which protects information that if released would give advantage to competitors or bidders. Please note that the section 3(a)(4) exception is applicable only until the contract in question is finally awarded. Open Records Decision No. 509 (1988).

You also assert that the "names and experience of key personnel" contained in the top-scoring proposal are excepted under section 3(a)(4). We agree that section 3(a)(4) protects such information until the contract in question is awarded.

Finally, with regard to the requested minutes of authority board meetings, you say that while the minutes are public information, you intend to disclose this information only after the board formally adopts the minutes at a later meeting. Assuming the minutes are available to the public under the Open Records Act, we find no provision of law which authorizes the authority to withhold them until they are formally adopted by the board. The act applies to all information a governmental body has in its possession without regard to whether such information has been formally "adopted."

Therefore, you may withhold the requested "scoring matrices." You may also withhold the "criteria" and the requested names and experience of key personnel until the contract is awarded. However, you must release the minutes of the board meetings in question. Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-197.

Yours very truly,

A handwritten signature in black ink, appearing to read 'William Walker', with a stylized, cursive script.

William Walker
Assistant Attorney General
Opinion Committee

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Ref.: ID# 11,772, 11805, 11810

Enclosure: Open Records Decisions Nos. 463 and 538, Return Documents

cc: David G. Batcho
Senior Archaeologist
Batcho & Kauffman Associates
755 Telshor, Suite 13 E
Las Cruces, New Mexico 88001